

I. The early political institutions of the English colonies in North America were not always particularly Democratic

- A. However, there was a clear democratic evolution of the constitutions adopted and revised through time.
- B. In general, this course of evolution is consistent with the labor-scarce Tiebout theory outlined in the last lecture.
- i. As colonies experimented with new designs that attracted residents, they tended to be copied elsewhere.
 - ii. Colonial governments gradually became ruled by a governor and bicameral legislature.
 - a. In some cases, governors were added and elected assemblies were split (Massachusetts).
 - b. More often, elected assemblies were added to preexisting arrangements with an appointed governor and a councils of state.
 - c. In effect the upper chamber protected elite interests and the lower chamber protected freeman interests.
 - iii. Many, as we will see, were explicitly developed to establish law and order and to protect personal property.
 - a. Some charters explicitly mention the existence of similar forms in other colonies.
 - b. Others mention efforts to promote peace, provide for the general welfare, or promote happiness.
- C. Although, many other pressures were at work in the American colonies and at home in Europe, competition for free labor and capital clearly played an important and consistent role in constitutional evolution within all of the colonies--as did evolving theories of governance.
- D. With the exception of Virginia, the first colonies adopted nondemocratic forms of government: a governor and unelected council forms of government (what I have called the "king and council" in some of my own research), and subsequently added elected chambers with increasing power over taxes and laws.
- i. For example, the Plymouth colony founded in 1620, the New Amsterdam Colony founded in 1624, and the Maryland colony founded in 1632 all used variations of this form of government for their small founding communities.

- ii. It bears noting that these colonies were otherwise quite different from one another: Plymouth was a religious colony founded by Puritans, Amsterdam was a commercial trading post, founded by Dutch merchants, and Maryland was a proprietorship (a colony initially purchased by a single person) that encouraged catholic emigration.
 - iii. With the exception of New Amsterdam, all of the first colonies had established churches and were not religiously tolerant places.
- E. Subsequent colonies often took more democratic and liberal forms.
- i. This was true, for example, of Connecticut (1639) and Rhode Island (founded in 1636, although not chartered until 1663), and Pennsylvania (1681).
 - a. Pennsylvania adopted a charter of liberties in 1682, which established an a bicameral legislature with an appointed council and an elected assembly with broad veto powers.
 - b. The upper chamber was subsequently eliminated in 1702 (which was quite unusual) resulting in a unicameral legislature.
 - c. (Pennsylvania was "granted" to William Penn in 1681 (to pay off a debt that King Charles II had owed his father). The development of Pennsylvania had already begun by Dutch and Scandinavian groups a few decades earlier.)
 - ii. Other new North American colonies began with governors and unelected councils and subsequently added elected chambers.
 - a. This was the case in West New Jersey, which was founded in 1664, and adopted democratic government adopted in 1681.
 - b. This was also the case in the North and South Carolina (initially a single colony founded in 1664) and in Georgia (1732), which combined local elective offices with unelected governors and councils until somewhat after 1700.
 - c. And it bears noting, their subsequent more democratic colonial governments included explicit property restrictions for suffrage rights (generally ownership of 50 acres of land).
 - iii. As a consequence of their political institutions and other guarantees from previous documents protecting property and religious freedom, Pennsylvania grew far more rapidly than the Virginia and Massachusetts colonies during the late 17th and 18th century. Pennsylvania was by the time of the American revolution the most populous and prosperous colony (Lutz, 1998, p. 266.)
 - iv. Of course the success of more liberal colonies lead to some of their institutions being copied by the older colonial governments.

- a. In 1636, the Plymouth colony adopted a more or less cabinet form of government with a governor and 7 person council of assistants elected by freemen, equal protection of the law in 1641, and bicameral legislature in 1644 (Massachusetts colony).
 - b. Maryland, adopted an elected assembly in 1638, equality before the law in 1638, and religious tolerance in 1649.
 - c. New Amsterdam was taken by England and renamed New York, but religious liberties were continued and a new, albeit relatively weak, assembly was adopted in 1683. (Similar assemblies had been proposed during the Dutch period, but not adopted.)
 - d. Connecticut adopted a bicameral legislature in 1698.
- F. By very early in the eighteenth century a good deal of the architecture for governance that characterizes modern America (and modern Europe) had already been worked out and broadly adopted.
- i. These were largely adopted to solve the problems of attracting a sufficient number of emigrants to produce prosperous places.
 - a. If you look at the colonial charters, you will find explicit statements that the charters are adopted to increase "enlargement" (e.g. attract new people so that more land can be cleared and settled).
 - b. You will also find statements about adopting procedures and laws to advance commercial development, which, of course, also tends to increase (and require) in increase in the number of colonists.
 - ii. But constitutional developments also clearly reflected what was much later called "liberal economic and political ideology."
 - a. By 1700, most constitutions (charters) had incorporated provisions for religious tolerance.
 - b. By 1700, most constitutions (charters) promised equality before the law and due process.
 - c. By 1700, most had adopted very broad suffrage laws--some allowed freeman suffrage, which amounted to nearly universal male suffrage.
 - d. By 1700, many had provisions that ruled out grants of monopoly privilege, which in effect supported competitive markets a century before Adam Smith had penned his careful defense of markets in 1776.
 - e. By 1700, many colonies had explicit rights of free political speech while in the legislature.
 - f. By 1700, the press was substantially free and uncensored.
 - g. Most charters were explicitly or implicitly grounded in the emerging theory of **popular sovereignty**, insofar as their governments were created because they made the community better off. For example: the Rhode Island assembly "**meet for the good and welfare of the said Company [community].**"
- iii. Colonial constitutional architecture was also surprisingly modern; it included provisions for:
- a. The elected assemblies were organized to represent regional interests (towns and counties) rather than class (nobles vs. commoners) or economic interests (merchants, church and farmers).
 - b. The assemblies were elected under relatively broad suffrage laws.
 - c. The assemblies had the power to create and appoint senior officials at many levels of government.
 - d. Provisions for regular and relatively frequent meetings of elected assemblies.
 - e. (Note that England at this time had recently adopted a requirement that parliament meet once every three years, whereas in many other royal systems in Europe, such as France and Denmark, lacked routine meetings of parliament or estates.)
 - f. The assemblies were granted power to veto and amendment power over legislation and taxes.
 - g. The latter, together with the lack of support from England, gave the elected chamber considerable control over both legislation and the executive--indeed more than formal constitutional documents implied.
 - h. The colonial governments increasingly functioned as independent nation states with representatives (quasi-ambassadors) in major European capitals, and very broad powers to tax, rule, and adopt public policies.
 - i. In a few cases, Connecticut, Rhode Island, and Massachusetts provisions were made to elect the chief executive (governor).
- iv. On the other hand, most colonies had appointed governors and upper chambers, tolerated slavery, and did not include women (except briefly in New Jersey) in their electorates. Many also had established state churches.
- G. All these constitutional developments took place well before the time of the American Revolution in 1776.
- H. Of course, although colonial America was very liberal and democratic by world standards prior to 1900, the colonies did not function as modern liberal democracies.

- i. The famous Salem Witch trials took place in the Puritan colonies of the North during the 1650s.
- ii. In the south, there was a rapidly expanding Slave population, which turned out to be an effective method of farming Tabasco and latter cotton.
 - a. On the other hand, Slavery was even more widespread in the sugar plantations of the Caribbean;
 - b. And, of course, witches had been burned in Europe in previous times.
- iii. Relations with native American's (the Indians) were often difficult, nasty, and brutish--although there were a few bright spots in this record.

II. Examples of early 17th century colonial charters and constitutions

A. The **Plymouth colony** founded by the Mayflower Compact in 1620 adopted a form of oligarchy as their first government.

- i. Their charter of New England provided for a 40 man ruling council, who were appointed for life (or at the pleasure of a majority of the other councilors), and whose replacements were to be selected by the council itself via majority rule.
 - a. Excerpts from the **Charter of New England 1620** (a proposed charter to James I, that divides the colony in two independent parts and proposes a similar council form of government for each.)
 - b. "JAMES, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. to all whom these Presents shall come, Greeting, Whereas, upon the humble Petition of divers of our well disposed Subjects, that **intended to make several Plantations in the Parts of America**, between the Degrees of thirty-four and forty-five; We according to our princely Inclination, favoring much their worthy Disposition, in Hope thereby to **advance the enlargement of Christian Religion**, to the Glory of God Almighty, as also by that **Means to stretch out the Bounds of our Dominions**, and to **replenish those Deserts with People governed by Laws and Magistrates, for the peaceable Commerce of all**, that in time to come shall have occasion to traffic into those Territories, **granted unto** Sir Thomas Gates, Sir George Somers, Knights, Thomas Hanson, and Raleigh Gilbert, Esquires, and of their Associates, for the more speedy Accomplishment thereof, by our **Letters-Patent**, bearing Date the Tenth Day of April, in the Fourth Year of our Reign of England, France and Ireland, and of Scotland the fortieth, **free Liberty to divide themselves into two several Colonies**
 - c. " do by these Presents ordain, constitute, limit, and appoint, that from henceforth, there shall be for ever hereafter, in **our Town of Plymouth**, in the

County of Devon, **one Body politic and corporate**, which shall have perpetual Succession, which shall **consist of the Number of forty Persons, and no more**, which shall be, and shall be called and known by the Name the **Council established at Plymouth**, in the County of Devon for the planting, ruling, ordering, and governing of New-England, in America..."

- d. "And our Will and Pleasure is, that from time to time, when and so often **as any of the Council shall happen to decease**, or to be removed from being of the said Council, that then, and so often, **the Survivors of them the said Council**, and no other, or the greater Number of them, who then shall be from time to time left and remaining, and who shall, or the greater Number of which that shall be assembled at a public Court or Meeting to be held for the said Company, **shall elect and choose one or more other Person or Persons to be of the said Council, ...**"
 - e. "... And further, of our especial Grace, certain Knowledge, and mere Motion, for Us, our Heirs and Successors, We do by these Presents give and **grant full Power and Authority to the said Council** and their Successors, that the said Council for the Time being, or the greater Part of them, shall and may, from time **to time, nominate, make, constitute, ordain, and confirm** by such Name or Names, Style or Styles, as to them shall seem Good; and likewise to revoke, discharge, change, and alter, as well all and singular, **Governors, Officers, and Ministers**, which hereafter-shall be by them thought fill and needful to be made or used, as well to attend the Business of the said Company here, as for the Government of the said Colony and Plantation, and also to make, ordain, **and establish all Manner of Orders, Laws, Directions, Instructions, Forms, and Ceremonies of Government** and Magistracy fit and necessary for and concerning the Government of the said Colony and Plantation, so always as the same be **not contrary to the Laws and Statutes of this our Realm of England**
 - f. The council members are listed by name, and many have noble titles: Duke, Marquess, Earl, Lord, Viscount, Sir, etc. (Of course, this was partially to induce the King to accept their proposal, although it doubtless also reflected a Plymouth consensus about who should be on the council.)
- B. In Contrast, the government established by the **Virginia Company** combined a similar appointed elite council with an elective second chamber, albeit one that would not meet very often.
- i. "An Ordinance and Constitution of the Virginia Company in England" written in 1621 is the first (more or less) democratic parliamentary constitution of the West.

- a. "We therefore, the said treasurer, council, and company, by authority directed to us from his majesty under the great seal, upon mature deliberation, do hereby order and declare, that, from hence forward, there shall be two supreme councils in Virginia, **for the better government of the said colony** aforesaid."
- b. "The one of which councils, to be called the **council of state** (and whose office shall chiefly be assisting, with their care, advice, and circumspection, to the said governor) shall be chosen, **nominated, placed, and displaced, from time to time, by us the said treasurer, council and company**, and our successors"
- c. " The other council, more generally to be called by the governor, once yearly, and no oftener, but for very extraordinary and important occasions, shall consist for the present, of the said council of state, and of two burgesses out of every town, hundred, or other particular plantation, to be respectively chosen by the inhabitants: which council shall be called The General Assembly, wherein (as also in the said council of state) all matters shall be decided, determined, and ordered by the greater part of the voices then present"
- d. "And **this general assembly** shall have free power, to treat, consult, and conclude, as well of all emergent occasions concerning the public weal of the said colony and every part thereof, as also to make, ordain, and enact such general laws and orders, for the behoof of the said colony, and the good government thereof, as shall, from time to time, appear necessary"
- C. About twenty years later, in 1639, the Connecticut colony proposed a council form of governance with a governor. However, they proposed one that was elected by freemen at regular meetings called for this purpose. Terms of office were limited to a single year.
- i. "It is Ordered, sentenced, and decreed, that there shall be **yearly two General Assemblies or Courts**, the one the second Thursday in April, the other the second Thursday in September following; the first shall be called the **Court of Election**, wherein shall be yearly chosen from time to time, so many Magistrates and other public Officers as shall be found requisite:
- ii. Whereof **one to be chosen Governor for the year ensuing and until another be chosen**, and no other Magistrate to be chosen for more than one year: provided always there be six chosen besides the **Governor**, which being chosen and sworn according to an Oath recorded for that purpose, **shall have the power to administer justice according to the Laws here established, and for want thereof, according to the Rule of the Word of God;**
- a. [The vote or] **choice shall be made by all that are admitted freemen** and have taken the Oath of Fidelity, and do cohabit within this Jurisdiction having been **admitted Inhabitants by the major part of the Town** wherein they live or the major part of such as shall be then present.
- b. It is Ordered, sentenced, and decreed, that the election of the aforesaid Magistrates shall be in this manner: **every person present and qualified for choice shall bring in** (to the person deputed to receive them) **one single paper with the name of him written in it whom he desires to have Governor, and that he that hath the greatest number of papers shall be Governor for that year.**
- iii. And the rest of the Magistrates or public officers to be chosen in this manner: the Secretary for the time being shall first read the names of all that are to be put to choice and then shall severally nominate them distinctly, and every one that would have the person nominated to be chosen shall bring in one single paper written upon, and he that would not have him chosen shall bring in a blank;
- a. and **every one that hath more written papers than blanks shall be a Magistrate for that year;**
- b. which papers shall be received and told by one or more that shall be then chosen by the court and sworn to be faithful therein;
- c. but in case there should not be six chosen as aforesaid, besides the Governor, out of those which are nominated, than he or they which have the most written papers shall be a Magistrate or Magistrates for the ensuing year, to make up the aforesaid number."
- d. (Note that the governor becomes, effectively, the prime minister of Connecticut, as an executive selected by the public assembly of freemen.)
- ### III. Mid-17th century colonial charters
- A. Mid century charters were generally more explicitly constitutional and began to include explicit provision for rights--such as freedom of conscience. They could be said to be more "liberal" insofar as they tended to sketch out electoral privileges and often included as constitutional privileges for freedom of religion (this even though many colonies had established churches at the time).
- B. For example the charter of **Rhode Island** granted by Charles II in 1663 (at the request of Rhode Island colonists, who wanted their secession from Plymouth recognized) included (I) recognition of the new colony, (ii)

provision for an elected government with a governor an elected council, and representative assembly and (iii) religious freedom (for Christians):

- i. "That they, the said ... (list of names) ... and all such others as now are, or hereafter **shall be admitted and made free of the company and society of our colony of Providence Plantations, in the Narragansett Bay, in New England, shall be, from time to time, and forever hereafter, a body corporate and politic, in fact and name, by the name of The Governor and Company of the English Colony of Rhode-Island and Providence Plantations**"
- ii. "There shall bee **one Governor, one Deputy-Governor and ten Assistants, to bee from time to time, constituted, elected and chosen, out of the freemen of the said Company**, for the time being, in such manner and form as is hereafter in these presents expressed; which said officers shall apply themselves to take care for the best disposing and orderings of the general business and affairs of, and concerning the lances and hereditaments hereinafter mentioned, to be granted, and the plantation thereof **and the government of the people there...**"
 - a. And that forever hereafter, **twice in every year**, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener, in case it shall be requisite, **the Assistants, and such of the freemen of the Company**, not exceeding six persons For Newport, four persons for each of the respective towns of Providence, Portsmouth and Warwicke, and two persons for each other place, townie or city, who shall be, from time to time, thereunto **elected or deputed by the major parte of the freemen of the respective towns or places For which they shall bee so elected or deputed, shall have a general meetings or Assembly** then and there to consult, advise and determine, in and about the affairs and business of the said Company and Plantations"
 - b. "... to elect and constitute such offices and officers, and to grant such needful commissions, as they shall think Ott and requisite, for the ordering, managing and dispatching of the affairs of the said Governor and Company, and their successors; and from time to time, **to make, ordain, constitute or repeal, such laws statutes, orders and ordinances, forms and ceremonies of government and magistracy**

as to them shall seem meet for the good and welfare of the said Company, and for the government and ordering of the lances and hereditaments

- iii. "Have therefore thought fit, and doe hereby publish, grant, ordain and declare, That our royal will and pleasure is, that no person within the said colony, at any time hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, and doe not actually disturb the civill peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their one judgments and consciences, in matters of religious concernments,"
 - iv. (It bears noting that similar election laws and freedom of conscience would not be allowed in England itself for a long time. Indeed, not until late in the 19th century would English freeman be allowed to vote for representatives to the House of Commons.)
- C. West **New Jersey** added a quite powerful elected assembly to a preexisting governor and ruling council arrangement in 1681. (Excerpts from Lutz, 1998).
- i. "There shall be a free assembly of the people for the Province aforesaid, yearly and every year at a day certain chosen by the said free people of said province, whereupon all of the representatives of the free people of the said Province shall be summoned to appear ... to make and ordain such acts as shall be requisite for good government and prosperity of the free people of said province ..."
 - ii. The Governor of said province shall not suspend or delay the signing, sealing and confirming of such laws as the General Assembly shall make...
 - iii. That it shall not be lawful for the Governor to make or enact any law or laws for said Province without the consent, act, and concurrence of the General Free Assembly...
 - iv. That it shall not be lawful for the Governor and council, or any of them, to levy taxes without the consent, act, and concurrence of the General Free Assembly ...
 - v. That no General Free Assembly shall give to the Governor, his heirs or successors any tax or custom for any time longer than one whole year.

- vi. That liberty of conscious in matters of faith and worship towards god shall be granted to all people within the Province who live peacefully and quietly therein; and that non of the free people of the said province shall be rendered incapable of office in respect to their faith and worship.
- vii. (It should be noted that in England, Catholics were in the process of being excluded from high office by parliament at this time. It should also be noted that this very clear provision was adopted several years before John Locke wrote his famous essay on Tolerance.)

IV. Colonial Charters of early 18th Century

- A. By seventeen hundred, charters had started to resemble modern constitutions with discussion of rights and more formal architecture for governance.
- B. For example, in 1701, William Penn grants the colony of **Pennsylvania** a new charter (the charter of Delaware--evidently named after the river) that guarantee's (i) freedom of religion for monotheists and (ii) an assembly elected by freeman suffrage with county level election districts. The Assembly is to meet annually in Philadelphia and have (iii) veto power over new laws. (iv) A formal process of amendment was included.
 - i. "I do hereby grant and declare, That **no Person or Persons, inhabiting In this Province or Territories, who shall confess and acknowledge One almighty God**, the Creator, Upholder and Ruler of the World; and professes him or themselves obliged to live quietly under the Civil Government, **shall be** in any Case **molested or prejudiced**, in his or their Person or Estate, because of his or their conscientious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Persuasion. .."
 - ii. "FOR the well governing of this Province and Territories, there shall be **an Assembly yearly chosen, by the Freemen** thereof, to consist of Four Persons out of each County, of most Note for Virtue, Wisdom and Ability, (or of a greater Number at any Time, as the Governor and Assembly shall agree) upon the First Day of October for ever; and shall sit on the Fourteenth Day of the same Month, at Philadelphia.."

- iii. "THAT **the Laws** of this Government shall be in this Stile, viz. **By the Governor, with the Consent and Approbation of the Freemen in General Assembly** met; and shall be, alter Confirmation by the Governor, forthwith recorded in the Rolls Office, and kept at Philadelphia, unless the Governor and Assembly shall agree to appoint another Place..."
- iv. The charter included a very restrictive process of amendment: "AND no Act, Law or Ordinance whatsoever, shall at any Time hereafter be made or done, to alter, change or diminish the Form or Effect of this Charter, or of any Part or Clause therein, contrary to the true Intent and Meaning thereof, without the **Consent of the Governor for the Time being, and Six Parts of Seven of the Assembly** met."
- C. **North Carolina (1715)**: Whereas His Excellency the Palatine and the rest of the true and Absolute Lord's Proprietors of Carolina, having duly considered the privileges and immunities wherewith the Kingdom of Great Britain is endued and being desirous that this their province may have such as may thereby **enlarge the Settlement and that the frequent sitting of Assembly is a principal, safeguard of their People's privileges**, have thought fit to enact. And Be It Therefore Enacted by the said Palatine and Lords Proprietors by and with the advice and consent of this present Grand Assembly now met at Little River for the North East part of the said province:
 - i. And it is Hereby Enacted that for the due election and Constituting of **Members of the Biennial and other Assembles it shall be lawful for the Freemen** of the respective precincts of the County of Albemarle to meet the first Tuesday in September **every two years** in the places hereafter mentioned....
 - ii. And It Is Hereby Further Enacted by the Authority aforesaid **that no person whatsoever Inhabitant of this Government born out of the allegiance of His Majesty and not made free; no Negroes, Mulattos, Mustees or Indians shall be capable of voting** for Members of Assembly; and that no other person shall be allowed or admitted to vote for Members of Assembly in this Government unless he be of the **Age of one and twenty years** and has been one full year in the Government and has **paid one year's levy** preceding the Election.

